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May 27, 1997

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*NOT ADMITTED IN MD

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MAY 27 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

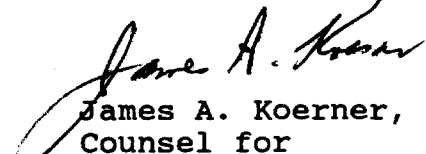
Re: MM Docket No. 95-135
Table of Allotments
FM Broadcast Stations
Bear Lake and Honor, Michigan

Dear Mr. Caton:

On behalf of Roger L. Hoppe, II, there are transmitted herewith an original and four (4) copies of an Application for Review, seeking full Commission review of the Memorandum Opinion and Order in the above-referenced proceeding.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner,
Counsel for
Roger L. Hoppe, II

cc: Mr. Roger L. Hoppe, II

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Before the
Federal Communications Commission
Washington, D.C. 20554

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MAY 27 1997

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 95-135
Table of Allotments)	RM - 8681
FM Broadcast Stations,)	
(Bear Lake and Honor, Michigan))	

To: The Commission

APPLICATION FOR REVIEW

Roger L. Hoppe, II ("Hoppe") by his attorneys, and pursuant to Section 1.115, hereby seeks Commission review of the Memorandum Opinion and Order ("MO&O") (DA 97-856) released April 25, 1997, in which the Chief, Policy and Rules Division, denied Hoppe's petition for reconsideration of an earlier action allotting FM Channel 264A at Honor, Michigan and denying Hoppe's counterproposal to substitute FM Channel 264C2 for Channel 261A at Bear Lake, Michigan.¹ In support hereof, the following is submitted.

1. On August 28, 1995, the Policy and Rules Division of the Mass Media Bureau issued a Notice of Proposed Rule Making ("NPRM") in response to a petition filed by Jacqueline Bourgard. The NPRM proposed the allotment of Channel 264A at Honor Michigan, and established October 19, 1995, as the date for filing comments on the proposal, or advancing a

¹Report and Order ("R&O"), 11 FCC Rcd 5301 (1996).

established October 19, 1995, as the date for filing comments on the proposal, or advancing a counterproposal. Because of doubts whether Honor possessed the attributes of a "community," the petitioner was requested to submit information addressing this issue.

2. On October 18, 1995, one day prior to the date for comments or counterproposals, Hoppe filed an application seeking a one-step upgrade for Station WZTU, Bear Lake, Michigan, to change from Channel 261A to Channel 264C2. This was clearly a counterproposal to the proposed Honor allotment. Hoppe also filed Comments, pointing out that Honor was merely a population grouping of some 292 people, undeserving of its own channel, or, at least, less deserving than the WZTU upgrade.

3. For her part, Jacqueline Bourgard simply submitted a letter listing a number of establishments allegedly located in Honor. Significantly, it does not appear that Jacqueline Bourgard restated her intention to apply for the channel, and, indeed, she did not apply.

4. Comments were also filed by Theodore G. Hammond, a consultant. Mr. Hammond pointed out that notwithstanding the fact the Bourgard proposal would provide a first transmission service to a handful of people, the counterproposal advanced by Hoppe would be a far more efficient use of the broadcast spectrum. He demonstrated that the population within the 1mV/m contour of a 6 kw station located at the Honor reference coordinates would be 25,255 persons, whereas the WZTU upgrade would provide 1mV/m coverage to 94,036 persons, an increase of 77,915 from the existing WZTU coverage. A Benzie County Commissioner also filed comments (albeit late) supporting the WZTU counterproposal.

5. In the R&O, the Policy and Rules Division erroneously held that the WZTU application was untimely as filed on October 20, 1995, a day later than the established deadline.

This was apparently due to a mistakenly assigned file number. The R&O further held that as a first local service, the Honor proposal would, in any event, be preferred, citing Revision of FM Assignments and Procedures, 90 FCC 2d 88 (1982).

6. On reconsideration, the Chief, Policy and Rules Division, acknowledged the error in the file number and filing date of the WZTU application. The Chief also shrugged off Hoppe's arguments to the effect that there is no usable transmitter site for the allotment, noting that two applicants for the allotment had certified site availability. Of course, the fact an applicant may have permission of a landowner to erect a tower does not guarantee that the site is usable.

7. It is high time for the Commission to re-examine its policies regarding the allotment of FM channels. Much has happened since 1982. Right now stations such as WZTU are precluded from improving their facilities and increasing coverage in homage to proposals to provide a "first local service" to population groupings of fewer than 300 people. The Commission cannot seriously believe that a radio station is going to provide local programming to such a small population.

8. Recent Notices of Proposed Rule Making have proposed the allotment of FM Channels to smaller and smaller "communities." Any location, however small, that is a census designated place is apparently a candidate for a "first local service." Hoppe believes the Commission should re-examine its priorities in FM allotments, and inject some common sense into the exercise.

9. In a case such as this, in which a timely counterproposal in the form of an upgrade application is filed, the Commission should not employ the lock-step application of policies

adopted one and a half decades ago, but should make a reasoned analysis under Section 307(b) of the Communications Act, holding an evidentiary hearing if need be.

10. Accordingly, it is respectfully requested that the Commission reverse the action of the Chief, Policy and Rules Division, delete the allotment at Honor, Michigan, and grant Hoppe's one-step upgrade application for Station WZTU. Alternatively, it is requested that Hoppe's application be considered along with the pending applications for Channel 264A at Honor, in a Section 307(b) proceeding.

Respectfully submitted

ROGER L. HOPPE, II

By: 

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CERTIFICATE OF SERVICE

I, Molly M. Parezo, secretary in the law firm of Baraff, Koerner & Olender, P.C., do hereby certify that copies of the foregoing **Application for Review** were served this 27th day of May, 1997, via first class United States mail, postage prepaid, upon the following:

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